

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ASSOCIATION OF AMERICAN UNIVERSITIES, <i>et al.</i>	)	)
	)	)
	)	)
Plaintiffs,	)	)
	)	)
v.	)	Case No. 1:25-cv-10912-ADB
	)	)
DEPARTMENT OF ENERGY, <i>et al.</i> ,	)	)
	)	)
Defendants.	)	)
	)	)

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**SECOND DECLARATION OF BERTA SCHREIBER**

I, Berta Schreiber, hereby declare as follows:

1. I am the Director of the Office of Acquisition Management within the Office of Management and the Senior Procurement Executive at the United States Department of Energy (DOE). I have held this position since October 1, 2023. In this position, I am responsible for overseeing DOE's acquisition and financial assistance policies, regulations and oversight programs. As the Senior Procurement Executive, I delegate authority to thirteen Heads of Contracting Activities to enter into contracts, financial assistance agreements, and other transactions agreements. I have DOE-wide responsibility and authority to provide overall direction of the Department's procurement system which includes acquisition and financial assistance. My authority does not include the National Nuclear Security Administration, the Federal Energy Regulatory Commission, or the Bonneville Power Administration.

2. Prior to assuming my current role, I served as both the Deputy Director for the Office of Acquisition Management since August 2022 and, prior to that, as the Director of the

Office of Procurement and Financial Assistance Policy (previously the Office of Policy). I was the Director of the Office of Policy within the Office of Acquisition Management since November 2011.

3. DOE's financial assistance award process typically begins when the relevant DOE program office publishes a Notice of Funding Opportunity (NOFO) (also sometimes called a Funding Opportunity Announcement). NOFOs are issued by numerous DOE offices, including the Office of Science, Office of Environmental Management, the Advanced Research Projects Agency-Energy (ARPA-E), and the Idaho Operations Office, among many others. NOFOs and their amendments are published to Grants.gov. Each NOFO contains a description of the funding opportunity and usually attaches documentation that provides additional details, terms, and conditions, including more information about the program or activity to be funded; applicant eligibility criteria; application requirements; application submission deadline; selection criteria and timeline; and the process for negotiations with the selectee and finalizing the award. NOFOs typically require applicants to submit a proposed budget as part of the application materials. The budget should identify funds the applicant requests for direct costs and indirect costs.

4. By default, Institutions of Higher Education (IHEs) generally use a preexisting indirect cost rate negotiated by the IHE with a cognizant federal agency—usually the U.S. Department of Health and Human Services (HHS) or the U.S. Department of Defense's Office of Naval Research (DOD)—responsible for negotiating and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. The negotiations result in a written agreement establishing the negotiated indirect cost rate. This agreement is often called a Negotiated Indirect Cost Rate Agreement (NICRA). An authorized representative for both the cognizant agency and the IHE signs the NICRA.

5. Further, IHEs identify their negotiated indirect cost rate(s) and the indirect costs for the award when they submit their application under the NOFO (SF 424) and the associated budget information (SF 424A). IHEs submit their NICRA to support the indirect cost rate(s) included in their application and budget, and it is by default used by the DOE Contracting Officer in reviewing the application to justify the IHE-submitted budget.

6. Applications submitted in response to a NOFO are reviewed and assessed by authorized representatives from the relevant DOE office. When the DOE office selects an applicant, it notifies the applicant and requests that it enter into negotiations for a final award. The DOE office negotiates final award terms with the applicant and prepares the award documents.

7. Once all terms and conditions are commemorated in final award documents, an authorized representative for both the selected applicant and the awarding DOE office executes the final award documents, which typically include a financial assistance agreement, terms and conditions of the award, and other items attached and incorporated by reference.

8. Attached as Exhibit A is a true and correct copy of the NICRA provided by Washington University in St. Louis in association with Award No. DE-FE0032481. This document was attached to my prior declaration executed April 22, 2025, and is an example of a NICRA executed by HHS. Upon information and belief, Washington University in St. Louis is a member of Plaintiff Association of American Universities.

9. Attached as Exhibit B is a true and correct copy of the NICRA provided by University of Wisconsin-Madison associated with Award No. DE-NE0009488. This is an example of a NICRA executed by HHS. Upon information and belief, the University of Wisconsin-Madison is a member of Plaintiff Association of American Universities.

10. Attached as Exhibit C is a true and correct copy of the NICRA provided by Plaintiff Massachusetts Institute of Technology in association with Award No. DE-NE0009506. This is an example of a NICRA executed by DOD.

I HEREBY DECLARE TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY under the laws of the United States of America, that the foregoing is true and correct.

EXECUTED this 2nd day of May, 2025 at Washington, DC.

BERTA SCHREIBER   
Digitally signed by  
BERTA SCHREIBER  
Date: 2025.05.02  
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Berta Schreiber